UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ERVIN F. TAYLOR :

v. : Civ. No: 3:99CV338(AHN)

MAXXIM MEDICAL, INC., ET AL. :

RULING ON DEFENDANTS' MOTION TO DISMISS

Presently pending in this age discrimination in employment action is the motion of Donald J. Ehmsen ("Ehmsen") and Andrew D. Simons ("Simons") to dismiss count four of the second amended complaint for failure to state a claim on which relief can be granted. This count, which is a claim for tortious interference with business expectancy, was previously dismissed without prejudice and the plaintiff subsequently filed an amended complaint restating the claim.

For the following reasons, the motion [doc. # 24] is GRANTED.

BACKGROUND

Where, as here, a claim for tortious interference with business expectancy or contractual relations is brought against an agent of one of the contracting parties, the plaintiff must allege that the agents acted for their personal benefit or gain and that benefit to the corporation played no role in their actions. See Malik v. Carrier Corp., 202 F.3d 97, 109 (2d Cir. 2000). The plaintiff initially pleaded only that Ehmsen and Simons were high-level managerial employees who acted maliciously

and outside the scope of their employment when they commenced an intentional course of conduct that was calculated to make his working conditions so intolerable that he would be forced to leave. The court found these allegations insufficient and dismissed the claim without prejudice. The plaintiff thereafter filed a second amended complaint in which he asserted that each defendant acted "for his own personal benefit outside the legitimate scope of his employment . . . to deprive and to deny plaintiff his right to severance and/or retention bonuses." He also alleged that their conduct "served no legitimate or lawful benefit to the corporate defendants. . . ."

DISCUSSION

Ehmsen and Simons maintain that the allegations in the second amended complaint are still insufficient to state a claim of tortious interference with business expectancy because they are merely legal conclusions without any supporting factual assertions. In opposition, the plaintiff maintains that the allegations are sufficient under the liberal pleading requirements of the federal rules. The court disagrees, and finds that the conclusory allegations do not survive scrutiny.

It is well settled that "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." 2 Moore's Federal Practice § 12.34[1][b]. While a plaintiff need not include evidentiary

detail, he must allege a factual predicate that is concrete enough to warrant further proceedings. See id.

Here, the plaintiff has not alleged any factual basis whatsoever to support the conclusory assertions that Ehmsen and Simons acted for their own personal gain and outside the scope of their employment or authority, nor do any of the alleged facts reasonably permit such inferences. To the contrary, the alleged facts support an inference that these defendants acted on behalf of their corporate employer when they engaged in the alleged campaign to harass, embarrass and ridicule the plaintiff to drive him from his employment. Accordingly, the plaintiff has failed to state a claim for tortious interference with business expectancy. Cf. Malik, 202 F.3d at 109 (affirming judgment as a matter of law in favor of defendant on employee's tortious interference claim where it was manifest that the defendant's actions against the plaintiff were in furtherance of her professional duties).

CONCLUSION

For the foregoing reasons, the defendants' motion to dismiss [doc. # 24] is GRANTED. Count four of the second amended complaint is dismissed.

SO ORDERED this day of February, 2001 at Bridgeport, Connecticut.

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Alan H. Nevas
United States District Judge